

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

MARCEL MIDDLETON, #173488	§	
VS.	§	CIVIL ACTION NO. 6:06cv311
SHERIFF, SMITH COUNTY, TEXAS	§	

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court referred the above-entitled and numbered civil action to United States Magistrate Judge John D. Love. The Magistrate Judge presented for consideration the Magistrate Judge's Report, containing proposed findings of fact and recommendations for dismissing this case as moot because Petitioner has been released from custody.

Respondent filed objections to the Report. Respondent contends that the Director of TDCJ-CID is not the proper Respondent because Petitioner has never been in the custody of TDCJ-CID, but was in the custody of the Sheriff of Smith County, Texas. This Court made a *de novo* review of Respondent's objections and determined that they have merit.

This Court finds that the Magistrate Judge's conclusions for disposition of this case are correct, and adopts them as the Court's conclusions. The Court therefore

ORDERS that Respondent's motion to dismiss the Director of TDCJ-CID as a Respondent is **GRANTED**;

ORDERS the Clerk of Court to correct the docket sheet to show that the proper Respondent

in this case is Sheriff of Smith County, Texas; and

ORDERS, ADJUDGES, and DECREES that this action is **DISMISSED WITH PREJUDICE**;

ORDERS that Petitioner is **DENIED** a certificate of appealability; and

ORDERS that all motions not previously ruled on are denied.

SIGNED this 5th day of February, 2007.

A handwritten signature in black ink, reading "Michael H. Schneider", written over a horizontal line.

MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE